offender but also as a deterrent and which will give the Prisons Department some opportunity of trying to remedy such defect of character. In the peculiar circumstances of the case the appeal was dismissed although the proper imprisonment in this case was something from 9 months to one year.

MAGISTRATE'S CRIMINAL APPEAL.

H. R. Sankey (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Thomson C.J. (delivering oral judgment): This is an appeal by the Public Prosecutor against a sentence imposed on one Yap Chong Fatt who was convicted for housebreaking in the Magistrate's Court at Kuala Lumpur and sentenced to two weeks' imprisonment. The amount of property involved is about $50.

The only other relevant facts are that he is 24 years old, that he is a first offender and, so far as can be ascertained by the Police and the Probation Officer, he is not of bad character.

He has served his sentence of 14 days' imprisonment and was released from prison some days ago and in the circumstances I think it would be unduly harsh to send him back to prison to serve a longer sentence. Also in the circumstances I do not think I have power to bind him over.

For the benefit of Magistrates, however, I want to observe that in a case like this 14 days' imprisonment was the wrong punishment.

Normally in the case of a young adult hitherto of good character where his first offence is not of great intrinsic gravity the proper course is to put him on probation. If the offence is too serious for that and merits imprisonment then a sentence of imprisonment should be imposed which will have some effect not only on the offender but also as a deterrent and which will give the Prisons Department some opportunity of trying to remedy such defect of character as there may be.

In my opinion the proper sentence in this case, if the accused was not to be bound over and if imprisonment was thought necessary, (and it probably was necessary) was one of something from 9 months to a year.

However, as I have said, in the peculiar circumstances of this case I think it would be wrong to send him back to prison now and I therefore dismiss the appeal.

I would add that in my opinion it was a very proper case for the Public Prosecutor to enter an appeal so as to give me this opportunity of making something clear which I hope will be carefully considered by Magistrates throughout the country.

Appeal dismissed.

PUBLIC PROSECUTOR v. QUEK BAK SENG

[A. Cr. J. (Gill J.) December 8, 1962]

[Muar — Criminal Appeal No. 36 of 1962]

Penal Code, s.304A — Causing death by rash and negligent act — Sentence where there is a high degree of rashness.

Where a high degree of rashness is established in a charge under section 304A of the Penal Code, a sentence of a fine would be an inadequate punishment.

Case referred to:—

(1) *R.* v. *Downey* [1954] M.L.J. 148.

MAGISTRATE'S CRIMINAL APPEAL.

Syed Agil Barakbah (Deputy Public Prosecutor) for the appellant.

T. Singam for the respondent.

Gill J. (delivering oral judgment): The respondent in this case was charged with and convicted of an offence under section 304A of the Penal Code and sentenced to a fine of $600 and in default 4 months' imprisonment. An order was also made disqualifying the respondent from holding a driving licence in respect of lorries Class (G) for a period of 12 months. The Public Prosecutor now appeals against the sentence which he says was manifestly inadequate in that the learned President of the Sessions Court, Muar, failed to consider his finding that the accused had acted not merely rashly but with a very high degree of rashness in attempting to overtake the other vehicle whilst his vehicle was loaded with workers, and that the accident resulted in the loss of four lives.

I do not consider it necessary to go into details of the evidence adduced by the prosecution against the respondent at his trial. It is sufficient if I state that on 5th January, 1962, at about 2.15 p.m. at Kampong Laku, Kepong Mines, Main Road, Pagoh the respondent was driving a 5 tonner truck carrying 41 workmen home from the mine after their morning shift. Immediately before the accident he was following a similar truck which at one stage was 25 yards ahead of him in the centre of the road and he was attempting to overtake the other truck notwithstanding the fact that the driver of the other truck had indicated by a hand signal that the respondent should slow down. There was some evidence that the respondent was at that stage driving at approximately 40 miles per hour. Then there was the evidence that as the respondent was trying to overtake the truck in front of him his truck went into the swamp on the right hand side as a result of which four of the passengers in his truck lost their lives.

On that evidence the learned President found that the respondent in attempting to overtake the other vehicle at the scene whilst his truck was loaded with workers, had acted not merely rashly but with a very high degree of rashness.

As regards sentence, the learned President stated as follows in his grounds of decisions:—

"During the course of the hearing it transpired that the working conditions in the Mine — particularly in respect of the maintenance of the road, speed-limit, and vehicles — were most unsatisfactory. There were about 120 workers and yet only 4 vehicles — two 5 tonner trucks and two landrovers — were provided to transport the workers. They all had to scramble on these four vehicles to or from work, as the distance from the village to the Mines is about seven miles. There was evidence that the drivers were not properly instructed regarding the speed limit on that road; and that no proper checking or facility was given to the vehicles so as they would be safe to carry passengers. The dangerous points on the road were not marked. The vehicle in question was habitually carrying about as many as 40 people, and yet nothing was done to it to ensure safety. It had no seat, hand railings, or even tail boards. It was staggering to think that such a condition was allowed in the Mines of this country. I agreed with the defence counsel that but for these factors the death toll might not have been so high."

With very great respect to the learned President these factors as set out in his grounds of decision, which he regarded as mitigating circumstances, to my mind were no mitigating circumstances at all. On the contrary, they were factors which he should have taken into consideration in deciding whether this was not a proper case for imposing a term of imprisonment. From what he has said it is abundantly clear that it was extremely dangerous for the respondent to have made any attempt to overtake the truck in front of him, especially when he was carrying 41 passengers. Having found the respondent guilty of the degree of rashness as described by him, to my mind it was incumbent upon him to impose a term of imprisonment. As Spenser-Wilkinson J. said in the case of *R.* v. *R.W. Downey*, [1] once this degree of rashness is proved "there cannot be many cases in which a sentence of fine would be adequate punishment."

In view of all the circumstances of this case I quash the sentence of fine imposed by the learned President and substitute in its place a sentence of 6 months' imprisonment. There will be no alteration as to the order of disqualification. The fine, if paid by the respondent, should be refunded.

Sentence of fine quashed; sentence of imprisonment substituted.

Solicitors: *Sault, Keith Sellar & Co.*

BANK NEGARA INDONESIA v. KIE HOCK SHIPPING CO. LTD.; BANK OF CHINA & ORS. 3rd Party; HONG LIAN TRADING CO. LTD. 4th Party

[O.C.J. (Tan Ah Tah J.) January 14, 1963]

[Singapore — Suit No. 1113 of 1960]

Bills of Lading — Acknowledgment of quantity, quality and value of goods — Goods delivered to person without production of bills of lading — Bills of lading transferred to plaintiffs as pledgees after wrongful delivery — Conversion.

On October 14 and 15, 1959, the defendants issued two bills of lading in which they acknowledged that goods were shipped by an Indonesian company and were to be conveyed to and delivered at the port of London with transshipment at Singapore unto the order of the plaintiffs. The defendants delivered the goods in question to the 4th party company without requiring that company to produce the relevant bills of lading on October 20, 1959. On November 18, 1959 the plaintiffs received the bills of lading as pledgees from their agents in London. The plaintiffs claimed against the defendants damages for conversion. The defendants joined the 3rd party which joined the 4th party claiming indemnities respectively.

Held: (1) the plaintiffs' right of action was not affected by the fact that at the date of the wrongful delivery the bills of lading had not been transferred to the plaintiffs;

(2) the plaintiffs, as pledgees, were entitled to succeed in conversion.

Cases referred to:—

(1) *Sze Hai Tong Bank Ltd.* v. *Rambler Cycle Co. Ltd.* [1959] M.L.J. 200.

(2) *Marquess of Bute* v. *Barclays Bank Ltd.* [1954] 3 W.L.R. 741.

(3) *Bristol and West of England Bank* v. *Midland Railway Co.* [1891] 2 Q.B. 653.

ACTION.

C. C. Tan for the plaintiffs.

M. B. Brash for the defendants.

C. H. Smith for the Bank of China.

Cur. Adv. Vult.

Tan Ah Tah J.: The plaintiffs' claim against the defendants in this action is for damages for breach of contract contained in 11 bills of lading by which the defendants acknowledged that certain goods were shipped on board the defendants' vessels for carriage to and delivery unto order or the order of the plaintiffs at London, England with transhipment in Singapore, and alternatively damages for conversion of the said goods by the defendants.

The defendants have joined the Bank of China, Tan Kah Keng and Hong Lian Trading Co. Ltd. as third parties, claiming that the third parties are liable to indemnify them under the terms of certain letters of indemnity and guarantee. In its turn the Bank of China has joined the Hong Lian Trading Co. Ltd. as a fourth party, claiming that the fourth party is liable to indemnify the Bank of China under the terms of a letter of indemnity.

The defendants' claim against the Bank of China is made in relation to the value of the goods specified in only two of the 11 bills of lading. The Bank of China is desirous of defending the plaintiffs' claim against the defendants in respect of these goods and the attitude adopted by counsel for the defendants is not to stand in the way of the Bank of China in making such defence. As to the goods specified in the remaining nine bills of lading, the defendants have submitted to judgment and judgment has been entered for the plaintiffs against the defendants for the sum of $779,790.82 being the value thereof. In what follows I shall be dealing only with the question whether the defendants